

Summary of U.S.-Chile FTA Government Procurement Chapter

Objectives

Article 9.1: Scope and Coverage

Outlines the coverage of the Chapter, the types of activities that are not covered, and commitments to not circumvent the Chapter. Requires Parties to ensure that their procuring entities comply with the Chapter in conducting procurement covered by the Chapter.

Article 9.2: General Principles

Requires national treatment of other Party's goods, services and suppliers; precludes discrimination against locally established suppliers on the basis of foreign affiliation or ownership. Requires rules of origin determinations to be non-preferential, and prohibits offsets.

Article 9.3: Publication of Procurement Measures

Establishes an obligation to publish laws, regulations and other measures that govern government procurement, and any changes to those measures.

Article 9.4: Publication of Notice of Intended Procurement

Requires procuring entities to publish notices of procurement opportunities in advance, and lists minimum information that such notice must include.

Article 9.5: Time Limits for the Tendering Process

Requires procuring entities to allow at least 30 days between publication of the notice of procurement and the deadline for submitting tenders. Allows for reduction of the time period in certain circumstances, such as for unforeseen emergencies .

Article 9.6: Information on Intended Procurements

Requires procuring entities to provide all information that suppliers need to prepare and submit responsive tenders. Prescribes that such information must include all the criteria that will be used to evaluate tenders. Requires entities, when they modify the criteria, to provide the new information to all suppliers and in a timely manner .

Article 9.7: Technical Specifications

Provides that procuring entities shall not adopt or apply any technical specification that would create unnecessary obstacles to trade. Requires technical specifications, where appropriate, to be performance-based, and based on international standards, where applicable. Prohibits technical specifications from being written to favor a particular supplier or product.

Article 9.8: Conditions for Participation

Establishes requirements that apply when entities require suppliers to satisfy registration, qualification or other conditions for participation in procurement. Includes timely publication of information on such procedures, and allowing adequate time for suppliers to prepare and submit applications. Limits any conditions of participation to those essential to ensure that the potential supplier has the legal, technical and financial abilities to fulfill the requirements and technical specifications of the procurement, and to those provided in advance to suppliers. Prohibits conditions that suppliers have previous work experience in the territory of the Party. Requires consideration of supplier's global activities. Requires prompt notification of suppliers of qualification decisions.

Article 9.9: Tendering Procedures

Requires use of open tendering procedures, in which all interested suppliers may participate. Allows limited tendering in certain defined circumstances, such as absence of tenders, with written justification.

Article 9.10: Awarding of Contracts

Requires that tenders be in writing, that they conform to the requirements in the tender documentation and are submitted by qualified suppliers. Requires award of contracts solely on the criteria set out in the tender documentation.

Article 9.11: Information on Awards

Requires procuring entities to notify suppliers of contract award decisions and to publish certain information on contract awards, including the name of the supplier, a description of the goods or services being procured, and the value of the contract. Requires maintenance of procurement records for at least three years.

Article 9.12: Ensuring Integrity in Procurement Practices

Requires Parties to maintain laws that make bribery of procurement officials a crime.

Article 9.13: Domestic Review of Supplier Challenges

Requires Parties to provide for domestic review of challenges by suppliers of a their implementation of the Chapter. Requires establishment of an impartial review authority, independent from the procuring entities, to hear the challenges, as well as procedures that provide for timely, transparent and effective reviews consistent with due process principles. Requires suppliers to be given at least 10 days to file a complaint and obligates procuring entities to respond to a supplier's challenge. Requires prompt written decisions by the review authority.

Article 9.14: Modifications and Rectifications

Establishes procedures under which Parties may make modifications and rectifications to the coverage under the Chapter, for example, if they privatize a covered entity.

Article 9.15: Non-Disclosure of Information

Requires Parties to protect confidential information.

Article 9.16: Exceptions

Provides that nothing in the Chapter prevents a Party from adopting or maintaining measures necessary to protect public morals, order or safety; human, animal or plant life or health; or intellectual property; or measures relating to goods or services of handicapped persons, philanthropic institutions or prison labor.

Article 9.17: Public Information

Requires Parties to provide via the Internet, or other comparable means, access to a database with information on procurement by its covered federal or central government entities.

Encourages entities to publish their future procurement plans early in the fiscal year.

Article 9.18: Committee on Procurement

Establishes a bilateral Committee on Procurement to address issues related to implementation of the Chapter.

Article 9.19: Further Negotiations

Requires a Party that offers a third party more advantageous coverage to enter negotiations, on request of the other Party, with a view to extending coverage on a reciprocal basis.

Article 9.20: Definitions

Defines key terms, including entity, build-operate-transfer contracts and offsets.

Annex 9.1

Section A: Central Level Government Entities

Provides that the Chapter applies to the procurement of 20 Chilean central government entities and regional governments and 79 U.S. federal entities, above specified thresholds (\$56,000 for goods and services and \$6,481,000 for construction services), subject to specified exceptions.

Section B: Sub-Federal or Sub-Central Level Government Entities

Provides that the Chapter applies to the procurement of 341 Chilean municipalities and 37 U.S. states, above specified thresholds (\$460,000 for goods and services and \$6,481,000 for construction services), subject to specified exceptions.

Section C: Other Covered Entities

Provides that the Chapter applies to the procurement of 11 Chilean government-related entities and 10 U.S. entities, above specified thresholds (\$280,951 for goods and services procured by certain of the entities, and \$518,000 for the other entities; and \$6,481,000 for all construction services), subject to specified exceptions.

Section D: Goods

Provides that the Chapter applies to the procurement of all goods by the covered entities, except where otherwise specified.

Section E: Services

Provides that the Chapter applies to the procurement of all services by the covered entities, except where otherwise specified.

Section F: Construction Services

Provides that the Chapter applies to procurement of all construction services by the covered entities, except for dredging in the United States.

Section G: Threshold Adjustment Formulas

Sets out the provisions for calculating the value of procurements to determine whether they are above the thresholds specified in the Agreement and thus covered by the Chapter. Provides that the thresholds will be modified every two years to take into account inflation and currency fluctuations.

Section H: General Notes

Sets out blanket exemptions from coverage of the Chapter, including U.S. set-asides on behalf of small and minority businesses.

